

# How effective is Parliament in controlling UK government and representing citizens?

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By Democratic Audit UK

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As part of our [2017 Audit of UK Democracy](#), **Artemis Photiadou** and **Patrick Dunleavy** consider how well the House of Commons functions as a legislature. Is Parliament still an effective focus of national debate and close control of the executive? And how well does the Commons function in scrutinising and passing legislation, or monitoring policy implementation?



Commons speaker John Bercow takes the Chair in 2010. Photo: [UK Parliament](#) via a [CC-BY-NC-ND 2.0 licence](#)

## ***What does democracy require for the legislature in focusing national debate, and scrutinising and controlling major decisions by the executive?***

- *The elected legislature should normally maintain full public control of government services and state operations, ensuring public and Parliamentary accountability through conditionally supporting the government, and articulating reasoned opposition, via its proceedings.*
- *The House of Commons should be a critically important focus of national political debate, articulating ‘public opinion’ in ways that provide useful guidance to the government in making complex policy choices.*
- *Individually and collectively legislators should seek to uncover and publicise issues of public concern and citizens’ grievances, giving effective representation both to majority and minority views, and showing a consensus regard for the public interest.*

## ***How should the legislature operate in passing laws and controlling the executive’s detailed policies?***

- *In the preparation of new laws, the legislature should supervise government consultations and help ensure effective pre-legislative scrutiny.*
- *In considering legislation Parliament should undertake close scrutiny in a climate of effective*

*deliberation, seeking to identify and maximise a national consensus where feasible.*

- *Legislators should regularly and influentially scrutinise the current implementation of policies, and audit the efficiency and effectiveness of government services and policy delivery.*

## Recent developments

The first peacetime coalition since 1945 between the Conservatives and Liberal Democrats marked out 2010-15 as an unusual period of Parliamentary relations with the government. Ministers (especially David Cameron as Prime Minister) were uniquely exposed to right wing Tory backbenchers and centre-left Liberal Democrats dissenting from government policies. Not surprisingly Phil Cowley showed that backbench dissent [affected 35 percent](#) of Commons divisions 2010-15, a post-war record (with the Labour government of 2005-10 as the nearest parallel). Most predictions are that Cameron's slender Conservative overall majority from 2015 on will be vulnerable to more backbench revolts, because Tory MPs in particular have now got the habit of dissenting. Early indications seem to bear this out, with the Conservatives repeatedly retreating from legislative proposals and suffering from deep cleavages over the European Union in 2015-16.

The coalition government period also yielded some potentially key changes in parliamentary operations. The Fixed Term Parliaments Act 2011 effectively requires that general elections be held every five years. This was seen as a key safeguard against Cameron calling an election early by the Liberal Democrats, but it actually did little to prevent their electoral punishment at the end of the government's enlarged term in 2015. The Tories are in one way a strong beneficiary, with a five year term to 2020 apparently securely guaranteed. But a power previously exercised through the royal prerogative by the Prime Minister seems to have migrated beyond Cameron's grasp. Government MPs can no longer be threatened that if the government loses a vote-of-confidence it must automatically provoke a dissolution of Parliament – although the extent to which such a threat was ever realistic is contested. The current situation remains as yet untested by any governmental crisis, but it is potentially more complex (see below).

A second potentially far-reaching (or potentially temporary) change followed from Labour and the Liberal Democrats rather credulously supporting the Conservatives to defeat the Scottish National Party's independence referendum in summer 2014. The three parties solemnly pledged a major grant of powers to the Edinburgh Parliament, and the morning after the result became clear Cameron announced that the deal would be implemented. However, it would be with a previously hidden codicil that changes would be introduced to allow English and Welsh MPs to vote alone in the Commons on laws just affecting them.

After the 2015 victory this substantial constitutional change was peremptorily implemented by a single majority vote to change the House of Commons' Standing Orders. So the growing pseudo-convention that UK constitutional changes require a referendum (buttressed by the 2011 referendum on the Alternative Vote, and the 2014 Scotland vote) was wrecked at a stroke. There was no real public consultation, no House of Lords vote on the change, no Supreme Court decision on the scheme and no judicial review.

We show how this changes Commons proceedings in more detail below, but in essence the EVEL provisions made these changes:

- a new 'England-only' committee stage for laws affecting only England (and including Welsh MPs for E & W laws);
- a ping pong process between the committee and full House (including other MPs) is possible at Report stage; and
- (iii) at the close of the Commons' consideration, a Legislative Grand Committee of only England MPs votes to accept or reject the final bill as a whole.
- The House of Lords process is not changed. But a Commons Grand Committee composed of only English

MPs considers any Lords amendments, as well as full the Commons.

Whether this scheme will be much used, and if it can survive a non-Tory majority, seems highly dubious. The change had a clear anti-Labour motivation in its early gestation, but since Labour lost all but one of its Scottish MPs to the SNP in 2015, only a Labour-SNP coalition now looks like an alternative government to the Tories. So the change for Labour already looks likely to be trivial.

The last legacy of the coalition era was that a significant parliamentary boundaries review to cut MPs numbers from 646 to 600 and to fine-tune equally sized constituencies was canned in 2012 by the Liberal Democrats, after Cameron proved unable to keep his promises on Lords reform because of Tory backbench resistance. But when (thanks to first past the post electoral system) the Conservatives won an outright (if wholly artificial) majority of MPs in 2015, the scheme was dusted off and implementation began – which is likely to [boost Tory MPs](#) by around 20 at the other parties' expense.

## **Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis**

## Strengths

- The House of Commons' long history and central cross-national position as an exemplar of sound Parliamentary practice give its members a strong sense of corporate identity, motivating some public interest behaviours.
- Some parliamentary institutions operate effectively, engaging the attention of MPs, media and the public – especially PM's question time (and to a lesser degree, ministers' question time), and the operation of [select committees](#).
- The collaboration of government and opposition is in some respects exclusionary, but also contributes to a certain degree of elite self-restraint and avoidance of rancorous partisanship that is essential to the operations of the UK's '[unfixed constitution](#)'.
- MPs' small constituencies have fuelled their role as grievance-handlers for constituents having trouble with public services, which has expanded in recent years.
- The post hoc auditing of spending via the Public Accounts Committee (PAC) has some strengths
- Select committees' roles and public visibility have both expanded in recent years, and the 'Wright reforms' have been effective modernisations
- The Liaison Committee sessions with the PM are a useful if modest innovation
- The Backbench Business Committee enables backbenchers to raise topics for debate in a more effective way
- MPs can raise issues with the government through Early Day Motions, very few of which are ever debated. Many topics tend to be trivial. The Procedure Committee in 2013 nonetheless [found](#) that there should be no changes. EDMs have generally declined

## Weaknesses

- The Commons is executive-dominated, with MPs most often voting on 'whipped' partisan lines. Party cohesion has weakened, but is still exceptionally high by cross-national standards
- Committee scrutiny of legislation via partisan whipped bill committees (with inexperienced MPs) is always ritualistic, ineffective and normally of very little value.
- The Commons' *ex ante* budget control is non-existent. Finance debates are simply political and general talk-fests for the government and opposition. Parliamentary 'estimates' are odd and out of date numbers, of declining value in relation to the [real dynamics](#) of public spending.
- Only a few component parts of the legislature's activities work well, and much of the time its behaviours are ritualistic, point-scoring and unproductive in terms of achieving policy improvements – e.g. anachronistic and time-wasting division vote procedures in a digital era. Most attempted modernisations remain stalled on traditionalist MPs' objections.
- The top two parties are not only normally over-represented in terms of MPs vis-a-vis their vote share, but also collude to run Westminster business as a club in their partisan interests (e.g. via archaic bodies like the Privy Council). The views of smaller parties and parties left unrepresented despite substantial vote shares are systematically excluded from Parliament.
- The Commons meets in a museum building, surrounded by a Victorian empire grandeur that helps perpetuate a culture amongst MPs that is always male-orientated, white, club-like, and obsessed with the 'privileges' of MPs. Debates and other sessions are often 'shouty' and visibly anti-deliberative.
- On matters affecting their own welfare, MPs are self-governing, self-interested and routinely dismissive of ordinary citizens' concerns (c.f. repeated MPs' expenses scandals and recent austerity-busting pay rises).
- The House of Commons (at 646 MPs) is an exceptionally large legislature. Most MPs don't have enough useful things to do (hence the still frequent second jobs and ethically dubious 'outside interests'). The government has created a huge '[payroll vote](#)' of ministers and pseudo-ministers simply to help maintain control of these excess numbers by dangling a chance for preferment.
- Fuelled by the coalition period, and now the Tories' narrow majority, the amount of secondary legislation is growing, and primary legislation is drafted in ways that increasingly leave its consequences obscure, to be filled in later via statutory instruments or regulation. Commons scrutiny of such 'delegated legislation' is very weak and ineffective.

- Moves to make the Commons more family-friendly and its culture more diverse are having some success, but much more can be done at zero cost.
  - Funneling all the *post hoc* financial scrutiny of public spending through only one committee (PAC) wastes much of the work of the National Audit Office (NAO) in scrutinising the civil service. Single department and smaller spending NAO reports should be run through Select Committees. The PAC should focus more on cross-departmental, inter-governmental and major spending areas.
  - Select Committees need to move away from sole reliance on out-of-date evidence-gathering process focusing only on calling witnesses and use NAO staff to produce meaningful research of their own on policy effectiveness. Both this and the previous point are almost zero cost to implement.
  - Limits on MPs' self-government need to be further strengthened.
  - e-petitions give the public a new opportunity to raise issues with the government via triggering a parliamentary debate if 100,000 signatures are obtained. By March 2016, over [7500 petitions](#) had been launched, approximately half of which have been rejected, while 21 had been debated in Parliament. So far this popular option has proved inconsequential in changing policies.
  - The Parliament website is very large but hard to use. Most MPs and Select Committees have only made very limited steps to connect with voters via social media.
- In 2015 the incoming Tory government proposed 19% cuts in the state funding given to opposition parties (known as [Short Money](#)), a move that will inhibit their ability to conduct parliamentary business and critique ministers effectively, without making any worthwhile savings.
  - Enacting the EVEL change via changing Commons' standing orders sets a thoroughly dangerous constitutional precedent, outside all judicial review. If a Commons majority alone can tell MPs in one part of the country that they cannot vote in a newly created but decisive Westminster procedure, what is to stop another majority imposing the same exclusion on MPs of a given party or ethnicity or hair colour?
  - The almost non-representation of UKIP in the Commons, and of all other parties in Scotland, further reduces the legislature's already tattered representativeness under first-past-the post voting.
  - The Political and Constitutional Reform Committee was a potent force for modernisation 2010-15, including within the Commons. In June 2015 it was abolished and its constitutional role kept only as a small sub-section of the Public Administration and Constitution committee.

## Parliamentary consideration of treaties and military actions

The Royal Prerogative consists of those powers of the mediaeval absolute monarchs that are not yet regulated by statute law. They are exercised on the Crown's behalf by ministers, especially the PM. Historically the PM and government have retained the prerogative ability to go to war and to ratify treaties. The Commons has only been able to vote on these decisions after the fact and in restrictive ways – e.g. via moving a no confidence motion in the government. The [Constitutional Reform and Governance Act 2010](#) curtailed the treaty ratifying power and put it on a statutory basis. Its new provisions may be very important if the UK votes to withdraw from the European Union on 23 June 2016.

The ability to commit UK armed forces to war appears to have been replaced through a new convention that MPs should vote on major actions before they are undertaken. In 2003, MPs approved action in Iraq (but influenced by a 'dodgy dossier' prepared by the Blair government). MPs also voted in 2011 for action in Libya against Gaddafi (although operations had in fact already begun), And in August 2013 MPs defeated a proposal by the Coalition to



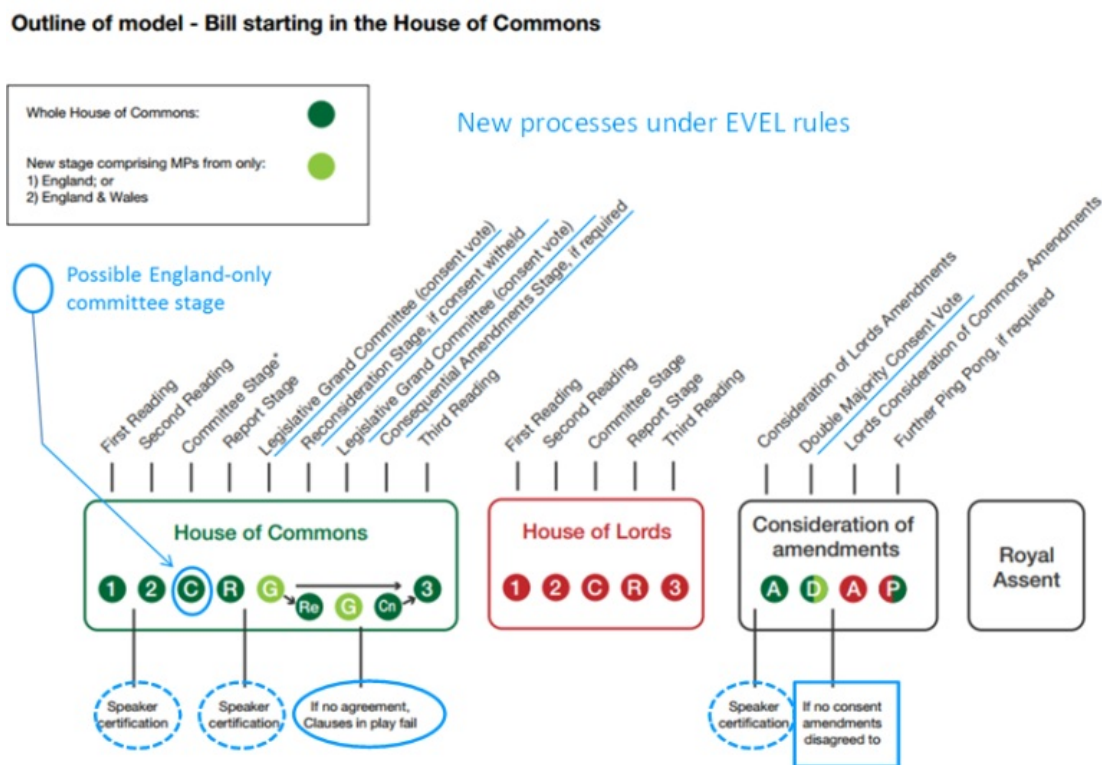
take military action against the Assad government in Syria. A year later a diametrically opposite motion for air strikes against IS (Islamic State) in Iraq (but not in Syria) was approved by the Commons in September 2014. In December 2015 the Tory government won a vote with a 174 majority to extend anti-IS air strikes to Syria in December 2015. This sequence would seem to suggest that the power to go to war is now subject to approval by the Commons. However, in mid-2016 it emerged that some UK ground forces were being secretly deployed in anti-IS actions in Libya, with no notification to Parliament.

## What do fixed term parliaments mean?

The new rules require a PM with a Commons majority to call the next general election on a five year fixed timetable. However, should the PM resign or lose a no-confidence vote, the process to be followed is still unclear. The monarch could ask another member of the largest party to try to form a government. But if they too declined, conceivably the Leader of the Opposition could be asked to and might seek to form a minority government without any immediate dissolution. To dissolve Parliament early a vote of two thirds of MPs is needed, which would normally require that (most) MPs from both the government and the main opposition should support the motion.

## EVEL: English Votes for English Laws

The government's explanation of how the English Votes for English Laws process will work is summed up in this diagram. The new processes are highlighted in blue.



The main components are covered above, but note that the Speaker is repeatedly involved in determining which laws or provisions within laws must be subject to this procedure, conceivably subject to oversight by Supreme Court. The Public Administration and Constitution committee's 2016 [report on EVEL](#) is highly critical.

## Scrutiny of the executive

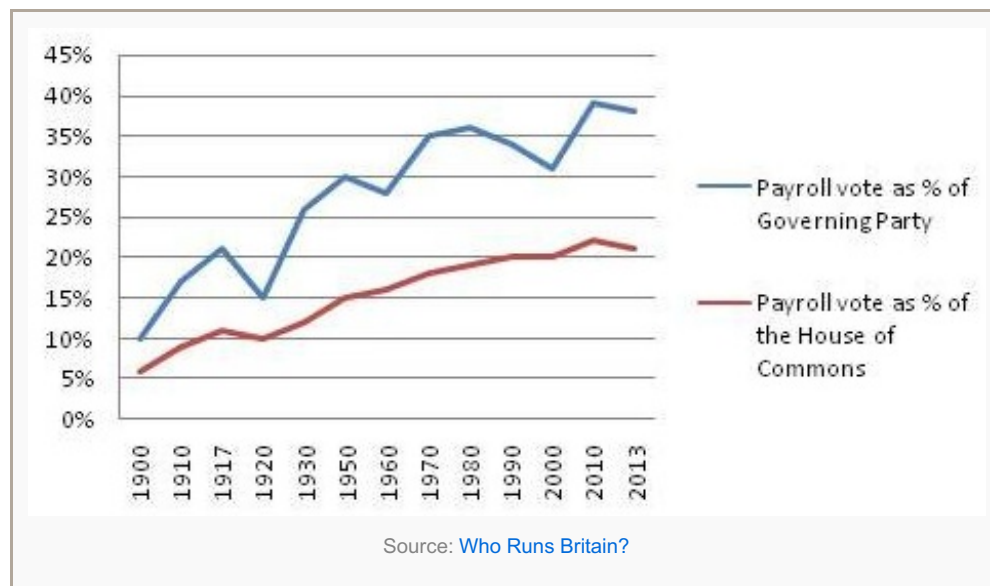
The prime minister's active participation in parliamentary proceedings is a key mechanism for ensuring the accountability of the executive, but they have been [less and less present](#) in the Commons since the time of Thatcher

and Blair. David Cameron's attendances are limited to a 30 minute question time (PMQs) once a week when Parliament is sitting, occasional speeches in major debates, and periodic public meetings with the chairs of Select Committees in the new Liaison Committee. More encouraging is recent [research](#) showing that backbenchers used PMQs in 1997-2008 as a key public venue, with backbenchers often leading the agenda and breaking new issues that later grew to prominence. The current Leader of the Opposition, Jeremy Corbyn, has also routinely been using PMQs to ask questions sent in on email by the public, somewhat changing the tone of the session.

## The 'payroll vote'

Parliament's independence vis-a-vi the executive has long been qualified by strong partisan loyalties amongst almost all MPs, who (after all) have spent many years working within parties before becoming MPs. The members of the government's frontbench are expected to always vote with the executive, as are Parliamentary Private Secretaries (who are pseudo-ministers). The last [official data](#) in 2010 showed approximately 140 MPs affected. [Unofficial estimates](#) of the size of the payroll vote suggest that it was equivalent to well over a third of government MPs, by 2013. Given the smallish number of Conservative MPs in the 2015 Parliament the ratio will still be high. When Commons seats fall to 600, the prominence of the payroll vote will increase, unless government roles for MPs are cut back.

**Figure 2. The rise of the payroll vote 1900-2013**



## Dissent by backbench MPs

The coalition period marked not just a period of record dissenting votes by backbenchers against their party line, but also the extension of this behaviour to larger and more consequential issues. The cleavages inside the Conservative party between pro and anti-EU MPs are exceptionally deep. During the summer of 2016 the Cameron government backed off several controversial legislative proposals, and proposed an exceptionally anodyne set of bills in the Queen's Speech, apparently to avoid straining party loyalties further in the aftermath of the Brexit referendum. The rise of serial backbench dissenter Jeremy Corbyn to be Labour leader has also created a serious gulf between his team and many of the Parliamentary Labour Party, which may reduce the cohesion of the main opposition party's voting.

## Conclusion

Public confidence in Parliament was very badly damaged by the expenses scandals of 2009, and trust in the House of Commons remains at a low ebb, despite some worthwhile but modest reforms in the interim, especially making

Select Committees more effective in scrutinising government. The Commons remains a potent focus for national debate, but that would be true of any legislature in most mature liberal democracies. There is no evidence that the UK legislature is especially effective or well-regarded, as its advocates often claim.

Five years of Coalition government 2010-15 (almost automatically) somewhat reduced executive predominance over Parliament. But it did not break traditions of strong executive control over the Commons. Tory divisions over the EU (plus the artificial exclusion of UKIP from Commons representation) have perpetuated backbench unrest after 2015. But these ameliorations of party discipline may still be temporary. Structural reforms to make the Commons a more effective legislature, and to modernise ritualistic behaviours and processes, are still urgently needed.

*This post does not represent the views of the London School of Economics or the LSE Public Policy Group.*

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